STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

Energy and Technology Committee — Public Hearing, February 14, 2023

Testimony submitted and presented by: *Marissa P. Gillett, Chairman*
PURA Position: *Support*

Raised S.B. No. 966 – An Act Concerning the Procurement of Standard Service Electricity and the Regulation of Public Utilities

Thank you for the opportunity to present testimony regarding **An Act Concerning the Procurement of Standard Service Electricity and the Regulation of Public Utilities, Raised Senate Bill No. 966.** The Public Utilities Regulatory Authority (PURA or the Authority) welcomes the opportunity to offer the following ***supportive testimony***.

The Authority strongly supports the overall concepts raised by S.B. 966, as the bill provides significant ratepayer protections and opportunities for cost controls. Specifically, the proposal would prohibit recovery by public utilities of certain costs in rates as well as impose limits on executive compensation. The proposal also better aligns the reporting and other statutory requirements of the state's public utilities, and makes changes to rate cases, all of which will support better ratepayer outcomes and improve Connecticut's future energy landscape.

Section 1

Section 1 would grant the Authority discretion to determine how best to implement revenue decoupling for the state's electric and gas distribution companies (known as the EDCs and LDCs, respectively), which is both timely and relevant to PURA's work in Docket No. 21-05-15, PURA Investigation Into a Performance-Based Regulation Framework for the Electric Distribution Companies (PBR Docket). The Authority understands and appreciates the key role that revenue decoupling mechanisms may play in aligning utility incentives with the objective of deploying robust energy efficiency and conservation measures by reducing the incentive for utilities to increase their revenue by increasing electricity sales; however, as discussed in the Authority Staff's recently issued Straw Proposal, a reexamination of the mechanism in light of certain priority outcomes identified in the PBR Docket may be warranted.[1] To be clear, PURA strongly supports the proliferation of energy efficiency and demand response measures, along with the specific goals enumerated by the state's Conservation & Load Management Plan; these objectives and goals would be incorporated into any assessment of the appropriate form and timing of

[1] See PURA Phase 1 Staff Straw Proposal, dated Jan. 25, 2023, available at: https://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/3a6d7b59aac07bc885258942007f529c/$FILE/21-05-15%20Phase%201%20Straw%20Proposal.pdf.

revenue decoupling. Indeed, PURA would be required to do so under existing law,[2] as is reinforced by the language of S.B. 966 in lines 21-22. Notably, PURA is also guided by the mandate in Conn. Gen. Stat. § 16-19e(a)(3) to perform its responsibilities "with consideration for energy and water conservation, energy efficiency and the development and utilization of renewable sources of energy and for the prudent management of the natural environment."

Section 2

Section 2 would shift the costs associated with contested proceedings, such as rate cases, away from ratepayers to instead be borne by the shareholders of regulated electric, gas, and water utilities. Notably, this language codifies legislative intent espoused in relation to the Take Back Our Grid Act, where this provision was first contemplated with respect to electric utilities, by elaborating on the types of costs that should be excluded for ratemaking purposes. While PURA does not concede that the existing language is limiting in terms of the types of costs barred from recovery, particularly in light of the legislative intent, the Authority observes that S.B. 966's proposed clarification removes the potential for doubt (and subsequent litigation), and also brings needed transparency to the types of costs previously recovered from ratepayers.

Moreover, the Authority supports the extension of this existing provision to the regulated water and gas utilities, in addition to the regulated electric utilities. For purposes of assessing the benefit that accrues to ratepayers (or lack thereof) associated with a utility's request for a rate amendment proceeding, there is no material difference between the type of public service company at issue, particularly given that in many instances across Connecticut the regulated public service companies share a corporate parent company.

The expenses implicated by this provision are not *de minimus*. For example, in a currently pending application for amended rates by Aquarion Water Company of Connecticut, the Company requests recovery of $1,050,320 in expenses related to the rate case, which it proposes to amortize over a period of five years.

Section 3

Section 3 would prevent the regulated utilities from recovering through rates the costs associated with membership dues or other contributions made to a business or trade industry association, as well as lobbying costs, and all advertising and marketing costs that were not ordered or approved by PURA. While participation in such business or trade association may provide value to the utilities, it is unclear, at best, how membership in these associations translates into direct ratepayer benefits in a manner that justifies recovery from utility customers. In particular, certain industry associations or the utilities themselves may conduct activities or spend money, including on lobbying, that may be contrary to the interests of ratepayers.[3] And, while the Authority commends the previous contributions of regulated entities to charitable and other non-profit endeavors, such costs should be borne by the companies' shareholders given that such contributions or sponsorships are often conveyed or denoted in the name of the individual

[2] Conn. Gen. Stat. § 16-2(m) states, "Notwithstanding any provision of the general statutes, the decisions of the Public Utilities Regulatory Authority, including, but not limited to, decisions relating to rate amendments arising from the Comprehensive Energy Strategy, the Integrated Resources Plan, the **Conservation and Load Management Plan** and policies established by the Department of Energy and Environmental Protection, shall be guided by said strategy and plans and such policies." (emphasis added).

[3] See, e.g., "8 States, DC urge FERC to reject EEI, Eversource call to drop competition for transmission projects" available at: https://www.utilitydive.com/news/state-utility-regulators-ferc-competition-rofr-transmission/610608/.

company. Shareholders of the regulated utilities are certainly permitted to continue making such contributions if they find them valuable.

Connecticut would not be the first jurisdiction to disallow the recovery of such costs. The Kentucky Public Service Commission recently disallowed the recovery through rates of similar association membership dues and other non-profit contributions.[4] Further, the Federal Energy Regulatory Commission is currently considering tightening its accounting rules to ensure that electric transmission companies do not recover expenses associated with lobbying or dues from industry trade organizations such as the Edison Electric Institute.[5] Indeed, there is a renewed focus on getting political activity out of bills, as detailed in a recent article[6] by the executive director of the Energy and Policy Institute, due to a $60 billion bribery scheme involving the investor-owned utility FirstEnergy in Ohio, among other drivers.

Section 4

Section 4 would permit the use of settlement agreements in rate cases, subject to certain parameters. Importantly, while settlements of contested rate proceedings would still be allowed, S.B. 966 would clarify that the terms of any proposed settlement must comport with the statutory principles set forth in Conn. Gen. Stat. § 16-19, thereby clarifying the standard of review that PURA must adhere to in such instances. Additionally, this section would require that any signatory to a proposed settlement agreement would be required to produce at least one witness to support the proposal, which is crucial evidence that the Authority often lacks when being asked to review such proposals – particularly unsolicited ones – and is an important accountability measure for any party supporting a proposed settlement. S.B. 966 would also offer important protection to parties and intervenors who were not engaged directly by the settling parties, ensuring that these entities receive at least three business days' notice before a settlement is filed with the Authority. This step is vital to ensuring a fair process for all stakeholders participating in the PURA process, particularly as the Authority's consideration of any proposed settlement will supersede all previous or pending working in a given proceeding. Lastly, and perhaps most importantly, the language in S.B. 966 Section 4 would preclude repetitive settlements from preempting the Authority's important obligation to undertake a periodic review and investigation of rates.

Section 5

Currently, Conn. Gen. Stat. § 16-19b(b) authorizes PURA to establish an efficiency factor in the purchased gas adjustment clause that may provide for less than 100% recovery of the gross earnings tax.[7] S.B. 966 Section 5 would allow PURA to similarly establish an efficiency factor for energy adjustment clauses that would preclude the complete pass through of the gross earnings tax to ratepayers, as is the current practice. As is the case with respect to many pass-through costs, utilities may not be appropriately incentivized to fulfill their statutory mandate to incur such costs in a manner that reflects prudent and efficient management and operations as is required by statute. Therefore, consistent with the General

[4] See Kentucky Public Service Commission, Order, dated June 30, 2021, pp. 25-28, https://psc.ky.gov/order_vault/Orders_2021/202000349_06302021.pdf.

[5] See Notice of Inquiry, dated December 16, 2021, https://www.ferc.gov/media/e-2-rm22-5-000.
See also "14 states urge FERC to tighten accounting rules to prevent utilities from recouping lobbying expenses" available at: https://www.utilitydive.com/news/state-utility-regulators-ags-ferc-clarify-lobbying-accounting-rules/619268/.

[6] Pomerantz, David, "Getting Politics out of utility bills," (Feb. 1, 2023), available at: https://www.utilitydive.com/news/politics-utility-bills-householder-pomerantz-puc-ferc/641716/.

[7] PURA began an inquiry into the exercise of this statutory authority in Docket No. 22-01-10, PURA Investigation into Potential Modification of the Purchased Gas Adjustment Clause.

Assembly's directive in the Take Back Our Grid Act that PURA should immediately move toward the design and implementation of performance-based regulation, the Authority supports any additional statutory language that empowers PURA to link the recovery of costs with a related performance-based measure, subject to such costs being incurred prudently and reasonably.

Section 6

Section 6 limits how much executive compensation may be collected in rates. Further, it requires the provision of a six-month bill credit equal to the amount of executive compensation recovered in rates whenever there is an increase in the standard service rate or adjustment clauses of 10% or more. This language provides an important incentive for public service companies to take greater ownership over the supply costs passed on to their customers. While public service companies procure supply from the wholesale market, and thus do not have direct control over the supply chain inputs,[8] they do manage the processes by which these supplies are purchased for their customers. As supply costs in Connecticut are passed through to customers, there is not currently a financial incentive for the state's public service companies or their executives to ensure that customers receive the lowest possible supply costs. Thus, Section 6 provides important financial motivation for the utilities and their executives to maintain a stable cost of service or a steady, reasonable rate of increase, as failure to do so would effectively mean that executive compensation is paid for by shareholders and not ratepayers due to the utility's performance (or lack thereof).

Section 7

Section 7 sunsets the current Electric System Improvements (ESI) charge imposed by Eversource. The Authority strongly supports the sunsetting of this charge, which means that as of January 1, 2024, new electric plan additions will no longer be eligible for cost recovery through an on-bill reconciling mechanism that was first authorized as part of a rate case settlement in 2018.

Importantly, this section would protect electric utility ratepayers by preventing new capital expenditures from being recovered through rates in between a fully litigated rate case proceeding. As background, the 2018 electric rate case settlement agreement for The Connecticut Light and Power Company d/b/a Eversource Energy (Eversource) established a mechanism for the company to recover various core capital and system resilience projects annually through an on-bill mechanism called the Electric System Improvements (ESI) tracker.[9] In practice, the ESI tracker results in a disjointed, and therefore less transparent, accounting of utility system costs that would otherwise flow through the distribution charge on Eversource customers' electric bills and be subject to a thorough prudency review.

In sum, Section 7 would resolve the ambiguity regarding the recovery of capital expenditures through the ESI after the expiration of Eversource's 2018 rate plan. Notably, The United Illuminating Company (UI) does not have a comparable tracker or mechanism to recover capital expenditures outside of a full rate case proceeding.

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[8] Importantly, this principle applies in fully decoupled and vertically integrated states alike (e.g., states like Connecticut where generation, transmission, and distribution are separated and state where all three are owned by one or more utility). It is common in vertically integrated states for supply costs to both be passed through to customers *and* for some of the risks of fuel costs swings to be borne by the utility.

[9] See Decision dated April 18, 2018 in Docket No. 17-10-46, Application of The Connecticut Light and Power Company d/b/a Eversource Energy to Amend its Rate Schedules, available at: http://www.dpuc.state.ct.us/2nddockcurr.nsf/8e6fc37a54110e3e852576190052b64d/94bb6bafd75d916f85258752007985f2?OpenDocument.

Section 8

Section 8 broadens the scope of factors to consider under Section 16-19gg of the General Statutes of Connecticut for determining rates during a rate amendment proceeding. Specifically, Section 8 would require PURA to consider macroeconomic conditions, including the economic realities faced by Connecticut's ratepayers, Connecticut law and prior Authority decisions and direction, and trends in the company's accrual of bad debt, among other topics. The express incorporation of these factors into Section 16-19gg would ensure that allowable revenues and rate changes are consistent with the economic conditions faced by Connecticut's residents.

Section 9

Section 9 proposes several important customer protections related to utility rate cases. First, Section 9 lowers the threshold for when the utility is required to provide each customer with the general terms of the rate change requested in their application (i.e., "rate case application"), including the amount of the proposed increase. As currently written, Conn. Gen. Stat. § 16-19 only requires this information to be provided when the requested change is above 20%; Section 9 revises this threshold to a 5% increase, and makes such communications non-recoverable from ratepayers. This is an important transparency measure to ensure all ratepayers receive relevant information on changes that will tangibly impact them.

Second, Section 9 includes several provisions that ensure that the Authority, the Office of Consumer Counsel (OCC), and all interested stakeholders are able to effectively perform their functions and do not unnecessarily burden the agencies and stakeholders tasked with protecting and/or representing ratepayers. Specifically, Section 9: (1) lengthens the review time for water rate case applications from 200 days to 350 days, commensurate with electric and gas utility rate cases; (2) limits the ability of utilities to open rate cases when there is a pending case before the Authority from a utility with the same parent company; and (3) restricts the ability of a utility to re-open a decided rate case. These measures will encourage governmental efficiency through restricting "log jams" on rate case work undertaken by the Authority, the OCC, and other stakeholders, and critically, will enhance the review process undertaken by these entities by allowing for the proper allocation and dedication of limited resources.

Section 10

Section 10 would bring water companies in line with the state's other utility companies by extending Conn. Gen. Stat § 16-19a(a) to water companies. Furthermore, it allows the Authority to conduct general rate hearings within the four-year timetable set by this bill. Rate cases and hearings are an opportunity to enact the public policy of the state; as such it is crucial that the Authority has the ability to conduct such hearings as needed in order to fulfill our mission of regulating the public utilities for the general public's use.

Sections 11 and 12

Sections 11 and 12 extend currently existing requirement(s) for large gas and electric utilities to undergo a management audit no less frequently than every six years, to water companies who serve over 75,000 customers. This extension is particularly relevant given that Aquarion Water Company of Connecticut shares a parent company with two other regulated entities in Connecticut, and thus, routine management audits of all three utilities should bear important lessons learned regarding shared services, among other things.

Further, Section 12 specifically bars recovery of management audit costs in rate cases. Given that an assessment of a public utility's management is an essential evaluation tool to demonstrate that the utility is operating in the best interest of ratepayers and with both efficiency and prudence, the timely

completion of a management audit is arguably a prerequisite to the filing of a general rate amendment application for which the associated costs would be similarly barred by proposed Section 2.

Section 13

Section 13 gives PURA flexibility regarding the manner in which any utility "overearnings" are returned. Depending on the magnitude and timing of the accrued "overearnings", several options may exist for returning such money to ratepayers. Flexibility is required to ensure that this money is utilized in the most advantageous way possible for ratepayers, but also done so in a timely manner before the next rate case proceeding.

Section 14

Section 14 seeks to provide assurances that parties requesting a stay of an imposed fine would be able to pay for the fine, should their appeal fail, by requiring that the party seeking the stay provide the equivalent amount in escrow or other surety. This provision is intended to protect ratepayers from future bankruptcy proceedings and similar situations. Unfortunately, the Authority notes that several recent instances have transpired in which ratepayers received less than the full amount due, as entities proceeded to file bankruptcy proceedings subsequent to receiving a stay of a PURA-imposed penalty.

This section also clarifies the standard that should apply when assessing requested stays of an Authority decision or enforcement action. This clarification allows for stays when all three of the following criteria are met: (1) the appeal is likely to succeed; (2) the party will suffer irreparable harm absent a stay; (3) and the stay is not against the public interest. These requirement will protect ratepayers from any financial or other harm from a stay.

Section 15

Section 15 incorporates several important modifications to the utilities' current reporting requirements. First, Section 15 clarifies that the Chairperson of PURA or their designee is the point of contact for the agency and that such point of contact must be notified within 12 hours of "any accident attended with personal injury or involving public safety, which was or may have been connected with or due to the operation of its property, or caused by contact with the wires of any public service company or electric supplier." Section 15 further authorizes a fine of one thousand dollars for any violation of such notification requirements, including authorizing up to one thousand dollars per day until the notification requirement is fulfilled. These requirements ensure that PURA leadership has actionable information as soon as possible to ensure public safety and to hold the utilities to account for their role in any accidents.

Section 15 also requires any restitution ordered by PURA to be equal to the replacement value of damage or destroyed property. Further, Section 15 clarifies that restitution cannot be reduced by the amount of any fines, assuring that full restitution is paid to make directly impacted customers whole, while keeping intact the ability for the Authority to levy additional fines commensurate with any violations. Section 15 also makes clear that any restitution or fines shall not be recoverable through rates.

Section 16

Section 16 would modify the existing accident reporting requirements for each electric distribution company to include information regarding the cause of all outages affecting 50 or more customers in the preceding month. Such monthly report will provide needed insight for the public and the Authority into the operations of the electric distribution companies and is consistent with the current requirement for monthly accident reporting.

Section 17 and 18

Sections 17 and 18 move the recovery of state energy policy and utility regulation personnel and administration, as well as non-profit energy assistance agency administrative costs, from ratepayers to public service company shareholders. More specifically, Section 17 and 18 bar recovery from ratepayers of the assessment made on utilities to fund PURA, OCC, DEEP's Bureau of Energy and Technology Policy, and certain parts of OPM. Additionally, this language would require public service companies to fund the administrative costs of nonprofit organizations engaged in energy assistance programs through this assessment.

The Authority strongly supports this change as allowing the cost of utility regulation and the oversight and administration of energy policy in Connecticut to be borne entirely by ratepayers is counterintuitive, as the system of utility regulation is designed to allow public service companies a guaranteed monopoly and a relatively safe and consistent rate of return. In return, the utilities are subject to regulation by PURA, in consultation and collaboration with others. Thus, it is inappropriate to require the public to pay for the entirety of that regulation, particularly when set up to provide the public service companies special privileges in the first place. Other jurisdictions similarly require personnel and administrative costs associated with utility regulation to be paid by utility shareholders.

Section 19

Section 19 creates a structure for compensating stakeholder groups representing the interests of residential utility customers residing in underserved areas, specifically environmental justice communities, or small business customers.

The Authority strongly supports the provisions included in Section 19. The Authority can only base its decisions on the record of each proceeding; as such, active participation from a diverse set of stakeholder groups is of vital importance to the final determination in any proceeding. Stated another way, the less inclusive or diverse the perspectives provided in the record of a proceeding, the less inclusive the resulting decision will be, frequently to the detriment of the state's more vulnerable and underserved communities. Moreover, in recent proceedings before the Authority, the participation of non-traditional parties has proven to be hugely impactful, particularly in the investigation into the electric utilities' response to Tropical Storm Isaias. Parties are typically outmatched both logistically and financially by the utilities in the PURA hearing room. With the passage of this section, barriers to participation would be lifted and there would be the opportunity for key groups of stakeholders to play a greater role in PURA proceedings, which would allow for a more robust dialogue and the formation of a stronger, more diverse record.

Section 20

Section 20 would require PURA to study standard service procurement and to report its findings to the General Assembly's Energy & Technology Committee. The Authority supports this provision.

The recent supply rate hikes have impacted ratepayers of Connecticut at a particularly vulnerable time. Since early 2020, ratepayers have been met with one difficulty after another, starting with increased usage during the pandemic, Tropical Storm Isaias, macroeconomic impacts of the pandemic, inflation and supply constraints, and more recently macroeconomic impacts of the war in Ukraine and constrained gas supplies. While the recent supply price increases are largely a symptom of our regional grid's overreliance on natural gas, all parties involved, including the regional grid operator, ISO-NE, the state's electric utilities, and PURA, should take stock of what led to these increases and what we all can do to better mitigate the impacts on ratepayers moving forward. Studying changes to the standard service process is

a perfect example of one step the Authority can take to ensure that these prices changes are mitigated and communicated as much as possible moving forward.

Sections 21 through 24

The Authority acknowledges that Sections 21-24 clarify the current definitions of “emergencies” and "after the occurrence of an emergency," which will aid utility providers and regulators in their statutory duties related to the implementation of any bill credits and compensation for food and medicine spoilage after an emergency. Specifically, the language clarifies that emergencies to which the 96-hour residential credit and food and medicine spoilage compensation apply refer only to events that cause outages for 69% or fewer customers. Commensurate with this upside for the utilities, however, the sections also disallow a waiver of the requirements for the credits and compensation for emergencies causing outages of 10% or fewer customers. The Authority believes these amendments strike an acceptable balance in the administration of these key provisions enacted as part of the Take Back Our Grid Act, in that it allows for improved efficiency in not allowing a waiver of the credits or compensation for lesser storms in response to which the utilities should easily meet the 96-hour requirements. The Authority also acknowledges that waiving the customer credit and medicine and food spoilage compensation provisions for storms that affect 70% or more of a utility’s customer base is reasonable given the complex nature of such events; indeed, an emergency of this magnitude is unprecedented since the utilities began tracking event level classifications.

Section 25 and 26

Sections 25 and 26 provide funding for PURA to expand general regulatory operations and to investigate storm preparation and response efforts. After the recent storms, and following emergencies in which consumer satisfaction was unacceptably low, it is clear that additional funding and access to incremental staff with which to regulate the public service companies is needed.

Summary of Requested Action

The Authority strongly supports the concepts and action items included in the bill, which would provide much needed protections against the potential for excessive and/or imprudent costs recovered from ratepayers by the state’s public service companies and would provide increased transparency of utility costs.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact Taren O’Connor at 860-827-2689(o), 860-999-3498(c) or by email at: taren.oconnor@ct.gov.